

1 taken place since then?

2 A. That's correct.

3 MR. REIDELER: I would like to have
4 this item labeled Lokting 9, please.

5 (Lokting Exhibit No. 9 was
6 marked for identification.)

7 BY MR. REIDELER:

8 Q. This is a multipage letter to Nancy
9 DuCharme from you and apparently she is a lawyer
10 that represents Sidley & Austin.

11 A. Yes, that's correct.

12 Q. And she's also counsel of U.S. Cellular
13 Corp., is that correct?

14 A. That's correct.

15 Q. And the tenor of the letter appears to
16 be that she's requesting on behalf of U.S.
17 Cellular that reseller rates be lower for her
18 client, is that correct?

19 A. In essence, that's correct.

20 Q. I direct your attention to the letter's
21 third paragraph. Could you tell me what you
22 advised Ms. DuCharme in that paragraph?

23 A. Well, she had written to Comcast on
24 behalf of her client and was objecting to the
25 rate that was being charged to U.S. Cellular

1 under its reseller agreement in Atlantic City and
2 wanted a lower rate equivalent to a corporate
3 rate that was being offered in Atlantic City.
4 And in doing so, she had made the statement that
5 Comcast was offering lower rates in Atlantic City
6 and that under applicable FCC regulations, she
7 felt her client was being discriminated against.
8 And her letter was forwarded to me for response.

9 And in this paragraph, I informed her
10 that Comcast does not set or offer rates, it's
11 simply a managing agent for Atlantic City and
12 Ellis Thompson Corporation sets the rates. So I
13 wanted to clarify for her that she should be
14 dealing with me and Mr. Thompson and Ellis
15 Thompson Corporation with respect to the rates
16 because those decisions are left up to us.

17 Q. Was this always the case?

18 A. Yes.

19 MR. REIDELER: I would like this item
20 labeled as Lokting 10, please.

21 (Lokting Exhibit No. 10 was
22 marked for identification.)

23 BY MR. REIDELER:

24 Q. This is a multipage letter with
25 attachments from you to Mr. Dave Watson. Do you

1 recognize the letter?

2 A. The cover letter?

3 Q. Yes.

4 A. Yes, I do.

5 Q. And what does it concern?

6 A. Well, Mr. Watson is a senior vice
7 president of Comcast cellular in charge of
8 marketing and sales and we deal with him
9 frequently on any issues that relate to
10 marketing. And the setting of rates and advice
11 regarding the changing of rates is something that
12 falls within his responsibility because that
13 really relates strongly to marketing and whether
14 you're going to have a competitive service to
15 offer.

16 So he had -- Comcast had developed a
17 new rate plan for their other markets which they
18 believed would -- which they offered for
19 competitive reasons in those markets and they
20 believed the same competitive reasons applied to
21 Atlantic City and he sought Mr. Thompson's
22 approval to initiate the new rate plan for
23 Atlantic City.

24 Q. And was this standard operating
25 procedure for changing rates?

1 A. Yes, it is.

2 Q. And did Mr. Thompson agree to this?

3 A. Yes, he approved it.

4 Q. Are rate changes usually initiated at
5 one of the quarterly meetings?

6 A. Well, they --

7 Q. By quarterly meetings, I mean the Ellis
8 Thompson quarterly corporate meetings.

9 A. Not necessarily. For example, this
10 change here was not done at the quarterly
11 meeting. It was something that came in between
12 the meetings. I'm referring to Lokting Exhibit
13 10. And Mr. Watson, I believe, did not want to
14 wait until the next quarterly meeting to
15 implement it, particularly because at this point
16 we're approaching the peak season for Atlantic
17 City.

18 So he simply wrote up a detailed
19 explanation of the rate plan and provided some
20 analysis to compare it with other rate plans we
21 were already offering and sent it to us in
22 written form so that Mr. Thompson and I could
23 review it and then call him and discuss any
24 questions with him over the phone and approve it
25 in a more expeditious manner than at a quarterly

1 meeting.

2 Q. I would like to direct your attention
3 to the quarterly meetings.

4 A. Okay.

5 Q. Does Mr. Thompson attend all the
6 quarterly meetings?

7 A. There have been one or two that he did
8 not attend due to conflicts with his schedule and
9 that I attended myself and reported back to him.

10 Q. Do you usually accompany him to these
11 meetings?

12 A. Yes, I do.

13 Q. And you attend all the meetings, I
14 presume?

15 A. Yes, I have.

16 Q. And that's always on behalf of
17 Mr. Thompson?

18 A. Yes.

19 Q. When you and Mr. Thompson go to a
20 meeting, do you usually have an agenda you bring
21 with you of matters you would like to discuss at
22 the meeting?

23 A. Yes, we do. Typically we will discuss
24 that agenda before we come out so that the people
25 at Comcast know what we want to discuss and, at

1 the same time, they will raise topics that they
2 want to discuss with us so that we know what they
3 want to talk about.

4 Q. When you say "come out," you mean, I
5 presume, the meetings in Philadelphia?

6 A. Yes, the meetings are in Philadelphia.

7 Q. And you have a discussion with
8 Mr. Thompson at your law firm in Oregon?

9 A. Yes.

10 Q. At the meeting, does Mr. Thompson
11 usually play an active role?

12 A. Yes, he does.

13 Q. Is the budget generally presented at
14 the quarterly meetings or is it just at an annual
15 meeting?

16 A. Well, the budget -- no, the budget is
17 discussed at every quarterly meeting. The budget
18 is set at the end of each year for the following
19 year so the quarterly meeting that occurs at the
20 end of a calendar year, the principal item on the
21 agenda is to review the budget and approve the
22 budget for the following year. And then the
23 quarterly meetings that occur during the course
24 of the year, we always review operations and see
25 how the system is performing in comparison to the

1 budget that was proposed and set.

2 Q. Before a budget is proposed, do you and
3 Mr. Thompson receive copies of what will be
4 presented at the meeting for your review?

5 A. Typically Comcast will have a draft
6 proposal sent to me, two copies of it, together
7 with backup information and details to support
8 it.

9 Q. Does Mr. Thompson always review these
10 proposals before the meeting?

11 A. Yes, he does, to my knowledge.

12 Q. And do you usually assist him in the
13 review?

14 A. Yes, I do.

15 Q. Is Mr. Thompson usually content with
16 the figures as presented to him in these
17 proposals?

18 A. Yes, he is.

19 Q. In other words, he never has any
20 quarrel with what the budget is going to be?

21 A. Typically not. I mean, I
22 think -- well, let me break that up into two
23 parts. There is an operating budget and there is
24 a capital budget and the operating budget he
25 usually has no quarrel with because the projected

1 revenues, cash flow and income have always
2 exceeded our expectations. So the budgets have
3 always been -- it's sort of a --

4 Q. Kind of hard to quarrel with that,
5 isn't it?

6 A. Yes, you can't quarrel with making
7 money. And each year, as we go through the
8 budget, the system and the operation of the
9 system has always out performed the budget. So
10 there hasn't been any quarrel with that.

11 In terms of capital expenditures,
12 frequently the capital expenditures that Comcast
13 recommends exceed what Mr. Thompson would like to
14 spend on the system, just in terms of whether you
15 go out and borrow more money to build out the
16 system, those types of issues.

17 Q. Again, I would like to refer back to
18 Exhibit Number 3.

19 A. Okay.

20 Q. And a section of this letter
21 concerns -- this is labeled Capital Budget.

22 A. Yes.

23 Q. Am I correct in saying that
24 Mr. Thompson was not content with the budget
25 proposed in 1995?

1 A. Well, this was -- yes, I mean, in
2 general you could say that.

3 Q. Would this be a typical reaction, do
4 you think, from Mr. Thompson? I presume, this
5 says capital budget, is this really operating
6 budget we're talking about?

7 A. No, capital budget -- that we're
8 talking about here on the second page of this
9 exhibit?

10 Q. Yes.

11 A. This is very typical. And if anything,
12 it's far more dramatic for this year because the
13 budget that was proposed by Comcast was a
14 significant number. They were proposing capital
15 expenditures of \$6 million.

16 At this point in time we probably had a
17 total investment of \$6 million in the system so
18 they were virtually proposing to double the
19 capital expenditures for the system and it was a
20 large number.

21 Q. Was Mr. Thompson's concerns rectified
22 subsequently in this situation?

23 A. Well, it's a complicated issue and it's
24 complicated because the system and the system's
25 owners had been involved in various forms of

ALDERSON REPORTING COMPANY, INC.

(202)289-2260 (800) FOR DEPO

1111 14th ST., N.W., 4th FLOOR / WASHINGTON, D.C., 20005

1 litigation, both civil litigation and the
2 proceedings with the FCC. And the litigation
3 creates uncertainties for the system which makes
4 it difficult to go out to the system owners or
5 the minority interest holders and try to raise
6 capital, it makes it difficult to go to the bank
7 and convince the bank to lend more money for
8 capital expenditures. And so you really have
9 three sources for these capital expenditures.
10 One is borrowing from the bank, another is
11 raising capital from equity owners and third is
12 operating revenues.

13 In this letter we were considering
14 these capital expenditures and we were
15 considering approaching the bank to increase the
16 credit line so as to allow expenditures of this
17 magnitude because even though the operating
18 budget for the following year projected
19 significant operating profits, they would not be
20 sufficient to cover this number.

21 Q. Were the capital expenditures modified
22 eventually?

23 A. Yes, they were. They were carved back
24 significantly to the point of approximately two
25 to two and a half million dollars.

ALDERSON REPORTING COMPANY, INC.

(202)289-2260 (800) FOR DEPO
1111 14th ST., N.W., 4th FLOOR / WASHINGTON, D.C., 20005

1 Q. And this was because of Mr. Thompson's
2 concerns?

3 A. Yes, it was.

4 MR. REIDELER: I would like to have
5 this item labeled Lokting 11, please.

6 (Lokting Exhibit No. 11 was
7 marked for identification.)

8 BY MR. REIDELER:

9 Q. This item is labeled Minutes of
10 Meeting, Re: Ellis Thompson Corporation, January
11 15th, 1992.

12 A. Yes.

13 Q. Are these minutes representative of
14 what generally transpires at one of the Ellis
15 Thompson Corporation quarterly meetings?

16 A. Yes, it is. The topics change from
17 meeting to meeting but it's --

18 Q. Typical?

19 A. Typical.

20 Q. I noticed that one of the items
21 concerns the possible purchase of U.S. Cellular
22 customers.

23 A. Yes.

24 Q. The minutes mention Mr. Thompson
25 authorized this exploration. Were the customers

1 eventually purchased?

2 A. Yes, they were.

3 Q. Could you tell me what role
4 Mr. Thompson played in that transaction?

5 A. Mr. Thompson's principal role in that
6 transaction was to analyze the economic aspects
7 of purchasing the customer base and
8 approving -- basically approving a range of
9 authorization for a price and basic terms in
10 terms of -- I want to say the quality of the
11 customer. There was a provision in the purchase
12 that we would not have to or he would not have to
13 pay for any customer that left the system within
14 six months after the purchase. And that was a
15 central issue for him.

16 Q. I notice also discussed at the meeting
17 was capital expenditures; that Mr. Thompson
18 questioned the proposed capital expenditures.

19 A. Yes.

20 Q. Do you recall what his questions were?
21 Of course, realize this was 1992.

22 A. Yes, if I could just briefly review
23 this.

24 Q. Sure.

25 A. Yes. Again, this would have been a

1 capital budget that was presented and it would
2 have been evaluated in terms of the amount of
3 money that was requested for capital expenditures
4 versus the projected operating cash flows for the
5 year and how much margin would be left if all of
6 the expenditures were incurred. And Mr. Thompson
7 was concerned that by making all of the
8 expenditures requested, it left too little
9 cushion for the system in case the revenues were
10 not as projected. So we engaged in a discussion
11 with Mr. Villecco who is in charge of engineering
12 and determined that certain of the requested
13 expenditures could be delayed for the following
14 year.

15 Q. And do you remember how the matter was
16 resolved?

17 A. I believe that -- well, my recollection
18 is consistent with what is stated here in the
19 minutes and that is that they had proposed
20 building two new cell sites and sectorizing
21 existing sites and delayed the sectorization of
22 the existing sites and improved the build out of
23 the two new sites.

24 Q. By sectorization, I presume this has
25 something to do with antennas, it has nothing to

1 do with heavenly versus temporal?

2 A. No. It has to do with when the cell
3 site is eventually built, the signal is
4 omnidirectional and you can increase the capacity
5 of that projector cell site by dividing it up
6 into three directional signals. And the capital
7 budget always -- I mean, the capital expenditures
8 generally address the need to expand the capacity
9 of the system to deal with the increased
10 subscriber base and increased usage of the
11 system.

12 Q. Is Mr. Thompson's approval always
13 needed before a new cell is added to the system?

14 A. Yes.

15 Q. Is there standard procedure for
16 obtaining his consent?

17 A. The standard procedure is that those
18 expenditures are incorporated into the capital
19 budget and are part of this review process and
20 approval of the capital budget each year for the
21 following year.

22 Q. Has he never denied approval of adding
23 a new cell?

24 A. Yes, he has. Typically in all of these
25 meetings, something is requested. For example,

1 we were talking about the \$6 million that is
2 reflected in Lokting Exhibit Number 3. That \$6
3 million, I believe, included the addition of six
4 or eight new cell sites and Mr. Thompson -- what
5 he approved in the end was the completion of two
6 new cell sites that were approved for the prior
7 year and the relocation of one existing cell site
8 that physically was not operating as well as it
9 should have been or could have been. So in that
10 case he essentially refused approval of all of
11 the new cell sites that Amcell proposed.

12 Q. The minutes also state that you and
13 Mr. Thompson made a decision concerning
14 the -- I'm sorry, let me take that back.

15 The minutes state that Mr. Thompson
16 reviewed Amcell's management fee and cost
17 allocations. Do you recall what the review
18 entailed?

19 A. Well, the review entailed -- basically
20 Mr. Thompson wanted to know that he was being
21 charged properly the amount of the fee that was
22 agreed to and the allocated costs that were
23 agreed to and that they were being allocated in
24 accordance with the management agreement and
25 those amendments. And we reviewed these

1 expenditures to ensure that the allocation and
2 that the charges were correct.

3 Q. Were they, in fact, correct?

4 A. Yes, they were.

5 Q. The minutes also mention that
6 Mr. Thompson approved the use of auto dealerships
7 as agents. Was this Mr. Thompson's idea?

8 A. I can't say -- no, I don't think it was
9 his idea. I can't say for certain. I believe
10 this was Mr. Gibbons' idea, who was in charge of
11 marketing at that time. Mr. Thompson
12 occasionally comes up with marketing ideas that
13 he shares with the Comcast people. I don't
14 recall if he ever thought of something like this
15 or not.

16 Q. But this would be something that
17 Mr. Thompson might come up with? This would be
18 not dissimilar from something that he might
19 present?

20 A. Right. And he lives in Washington
21 State and he keeps pretty close tabs on how the
22 cellular operators in the Northwest market their
23 product and he shares those ideas with the
24 Comcast people to make sure that they're aware of
25 marketing ideas out in the West.

ALDERSON REPORTING COMPANY, INC.

(202)289-2260 (800) FOR DEPO
1111 14th ST., N.W., 4th FLOOR / WASHINGTON, D.C., 20005

1 Q. Does he do this through reading
2 professional publications or how does he --

3 A. I don't know.

4 Q. You just know he has these ideas?

5 A. I know he brings them up occasionally
6 at these meetings.

7 Q. The final matter mentioned in the
8 minutes is the general agent compensation scheme
9 for 1992. Do you recall what this scheme
10 entailed and what Mr. Thompson's reaction was to
11 it?

12 A. The scheme entailed setting commissions
13 for agents when they sold a phone or sold a
14 service, a residual commission, and probably some
15 type of advertising allowance. And he approved
16 it.

17 MR. REIDELER: I would like this item
18 identified as Lokting 12, please.

19 (Lokting Exhibit No. 12 was
20 marked for identification.)

21 BY MR. REIDELER:

22 Q. This is a two-page letter dated March
23 19, 1992 from Mr. Villecco. At that time, was
24 Mr. Villecco in charge of the Atlantic City
25 engineering department?

1 A. Yes, he was.

2 Q. The letter mentions Mr. Thompson's
3 interest in purchasing rather than leasing a cell
4 site.

5 A. That's correct.

6 Q. Now, was it Mr. Thompson's habit to
7 concern himself with engineering matters at the
8 facility?

9 A. Yes, he was always interested in the
10 basic terms and conditions for establishing a
11 cell site and what was required.

12 Q. Is it he who decides whether or not a
13 cell site will be purchased or leased?

14 A. Yes.

15 Q. And do you recall what decision he made
16 on this cell site?

17 A. He decided to lease it. He was
18 interested in purchasing it. And I think he was
19 thinking from a long-term perspective it would be
20 better to own the site than to lease it but for
21 this particular site, there were various reasons
22 that made it economically impractical to purchase
23 this site, on top of the fact that it wasn't
24 really for sale. And so he went ahead with the
25 lease proposal.

1 MR. REIDELER: I would like this item
2 identified as Lokting 13, please.

3 (Lokting Exhibit No. 13 was
4 marked for identification.)

5 BY MR. REIDELER:

6 Q. This is a letter and attachments dated
7 April 24th, 1992 to Mr. Thompson from
8 Mr. Villecco. And it concerns overlap, among
9 other things, of two cell sites, a signal
10 overlap, I guess, from other station signals
11 coming into the Atlantic City service area, is
12 that correct? Is that a correct interpretation?

13 A. Yes.

14 Q. Would you say this letter further
15 typifies Mr. Thompson's concern with engineering
16 matters that arise at the Atlantic City
17 facilities?

18 A. Yes, it does. These types of issues
19 typically are presented to him for his
20 consideration and approval.

21 Q. Is this a rather common occurrence?

22 A. Yes, I would say that these types of
23 issues pop up several times each year.

24 Q. When he's presented with an issue such
25 as this, does he ask for alternatives or does he

1 usually just sort of go along with whatever is
2 presented?

3 A. Well, I don't know that he so much asks
4 for alternatives as he asks -- he wants to know
5 what the impact is on the Atlantic City system
6 and whether it has any negative operating or
7 financial impact on his system if he gives the
8 consent. So that's explored.

9 There is another issue that's addressed
10 here in terms of rebuilding a tower for a cell
11 site and that's something he probably would ask
12 for options or try to negotiate maybe something
13 different from what is suggested by Comcast.

14 Q. In other words, Mr. Thompson asking for
15 alternatives would not be unknown?

16 A. Oh, no. He asks for alternatives and
17 he instructs -- he comes up with his own ideas
18 and he instructs Comcast to follow through on
19 those ideas.

20 MR. REIDELER: I would like this item
21 identified as Lokting 14, please.

22 (Lokting Exhibit No. 14 was
23 marked for identification.)

24 BY MR. REIDELER:

25 Q. This is a one-page letter to Richard

1 Lyons from Jeffrey Smith. It concerns Ellis
2 Thompson Corporation's use of the Cellular One
3 logo.

4 A. Right.

5 Q. Do you know what the purpose of the
6 Cellular One logo is?

7 A. The principal function is a marketing
8 one and it is to license the use of the name
9 Cellular One so that service in Atlantic City for
10 the nonwire line system can be marketed under the
11 Cellular One name.

12 Q. Would Mr. Thompson's prior approval be
13 required before such a contract could be entered
14 into?

15 A. Yes. In fact, it was entered into
16 directly by Ellis Thompson Corporation so he
17 would have signed the contract.

18 Q. Does the corporation still use the
19 logo?

20 A. Yes, it does.

21 MR. REIDELER: I would like this item
22 identified as Lokting 15, please.

23 (Lokting Exhibit No. 15 was
24 marked for identification.)

25 BY MR. REIDELER:

1 Q. This is a memorandum to Ellis Thompson
2 from Joan LoPrete. And in it she is requesting
3 authority to raise the activation fees. Do you
4 know what Ms. LoPrete's title was at the time
5 this memo was drafted?

6 A. No, I do not.

7 Q. Do you know what an activation fee is?

8 A. An activation fee is an up-front fee
9 that's charged to activate the service when a new
10 customer buys the service.

11 Q. Now, is Mr. Thompson's consent required
12 before any changes are made in the fees?

13 A. Yes.

14 Q. Did he establish the initial fee for
15 activation?

16 A. I believe he did.

17 MR. REIDELER: Let me have this item
18 identified as Lokting 16, please.

19 (Lokting Exhibit No. 16 was
20 marked for identification.)

21 BY MR. REIDELER:

22 Q. This is a two-page letter dated May
23 19th, 1994 to Mr. Thompson from Mark Panetta.
24 And in it Mr. Panetta is requesting approval of
25 Atlantic City joining the Industry Net Settlement

1 Program.

2 A. Right.

3 Q. Have you seen this letter before?

4 A. Yes, I have.

5 Q. And do you know what this program is or
6 could you describe to us what the program
7 entails?

8 A. Well, basically it's a means to net out
9 roaming revenues among markets. For example, if
10 Philadelphia owes Atlantic City \$100,000 and
11 Atlantic City owes Philadelphia \$50,000, a
12 \$50,000 net check is sent to Atlantic City from
13 Philadelphia, instead of trading two checks back
14 and forth.

15 Q. Did you discussed this program with
16 Mr. Thompson?

17 A. Yes, I did.

18 Q. And did he authorize the corporation to
19 become a member?

20 A. Yes, he did.

21 MR. REIDELER: On this area I have no
22 further questions, Joe. Do you have anything you
23 would like to add?

24 MR. WEBER: Yes, I have a few
25 questions.

1 EXAMINATION BY COUNSEL FOR
2 FEDERAL COMMUNICATIONS COMMISSION
3 BY MR. WEBER:

4 Q. You've obviously stated you are an
5 attorney. Are you a partner with the firm?

6 A. Yes, I am.

7 Q. And when did you become a partner?

8 A. I became a partner in 1987.

9 Q. Was this prior or subsequent to your
10 representation of Ellis Thompson?

11 A. Prior.

12 Q. Are you the primary person at your firm
13 handling matters relating to Mr. Thompson and
14 Ellis Thompson Corporation?

15 A. I am the primary person in charge of
16 the business matters and the transactional
17 matters relating to Ellis Thompson Corporation
18 and the operation of the system. I have some
19 involvement in the litigation but I'm not the
20 primary person involved in the litigation.

21 Q. When Mr. Thompson calls with questions
22 or seeks advice, is it you he would speak to?

23 A. Yes, it is.

24 Q. Did you have any background in
25 telecommunications prior to representing

1 Mr. Thompson?

2 A. No, I did not.

3 Q. If you would look back to Exhibit
4 Number 1, you discussed the three amendments to
5 this exhibit. Are there any other amendments
6 that you know of that are not attached hereto?

7 A. We have a verbal agreement to reduce
8 the management fee to seven and a half percent
9 and to reduce the switching fee to 4 cents per
10 minute.

11 Q. And why are these changes being made?

12 A. Just to reflect the changing economics
13 of the system.

14 Q. Whose idea was it to make these new
15 changes?

16 A. Mr. Thompson's.

17 Q. And how were these changes negotiated
18 with Comcast?

19 A. Basically just sitting down with them
20 and reviewing the economics and reviewing the
21 assumptions upon which the prior fees were set
22 and reaching agreement with them that those
23 assumptions had changed over time and coming up
24 with new fees that were reasonable in light of
25 what the original answers of the parties were.